

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

SAMUEL KATZ, *et al.*, an individual,)
on his own behalf and on behalf of all)
others similarly situated,)

Plaintiffs,)

v.)

Civil Action No: 1:18-cv-10506-ADB

LIBERTY POWER CORP., LLC, *et al.*,)

Defendants.)

**CONSENT MOTION FOR LEAVE TO ACCEPT DEFENDANTS' ALREADY FILED
BRIEF IN EXCESS OF PAGE LIMITS AND FURTHER
SCHEDULING AND BRIEFING RELIEF**

Defendants Liberty Power Corp., LLC, and Liberty Power Holdings, LLC (collectively, “Defendants”), by counsel, with the consent of counsel for the Plaintiffs, move this Court for leave to accept Defendants’ already filed brief in excess of page limits and further scheduling and briefing relief, as delineated below. In support thereof, Defendants state as follows:

1. On September 24, 2018, Plaintiffs filed a Consent Motion file to a Motion for Leave to File a Second Amended Complaint. ECF No. 85. Plaintiffs requested up to 45 pages for their Motion for Leave to File a Second Amended Complaint and requested the Court grant Defendants leave to file an opposition brief up to 45 pages as well. *Id.* at 3.

2. On September 25, 2018, the Court granted the above-requested relief. ECF No. 87.

3. On October 10, 2018, Plaintiffs filed their Motion for Leave to file a Second Amended Complaint and a 41 page Memorandum in Support. ECF Nos. 95, 96.

4. After review of Plaintiffs' filing and authorities cited therein, Defendants found the Motion for Leave to File a Second Amended Complaint had merit and choose not to file an opposition (and thus not utilize the leave it was given to file a 45 page opposition).

5. On November 14, 2018, the Court granted Plaintiffs' leave to amend as unopposed and Plaintiffs filed their Second Amended Complaint. ECF Nos. 108, 109.

6. Defendants received two extensions until January 9, 2019 to file a responsive pleading to the Second Amended Complaint. ECF Nos. 112, 116.

7. On January 9, 2019, Defendants filed a 45 page Memorandum in Support of their Motion to Dismiss Plaintiffs' Second Amended Complaint. ECF No. 119.

8. By mistake, Defendants applied the Court's leave to file 45 pages in opposition to the Motion for Leave to File a Second Amended Complaint to Defendants' Motion to Dismiss the Second Amended Complaint. *See* ECF No. 119 at 1 (top right corner noting leave to file excess pages granted September 25, 2018). Defendants apologize for this error.

9. Defendants and Plaintiffs have conferred and jointly request the following relief:

- a. The Court Grant Defendants' leave *nunc pro tunc* to file a 45 page Motion to Dismiss the Second Amended Complaint and accept the document already filed (ECF No. 119);
- b. The Court grant Plaintiffs until February 13, 2019 to file an opposition to Defendants' Motion to Dismiss that is up to 45 pages in length.

10. On December 12, 2018, Defendants moved to continue their deadline for their response to the Second Amended Complaint by Plaintiffs' consent, but "Plaintiffs conditioned this consent on receiving Defendants' consent to a similar extension for the filing of Plaintiffs' opposition to any motion filed by Defendants until February 13, 2019." ECF No. 115. ¶6. It is

possible to read the order granting the December 12 motion as not expressly also granting the corresponding extension for Plaintiffs' opposition. *See* ECF No. 116 ("ELECTRONIC ORDER entered granting [115] Motion for Extension of Time to 1/9/19 to respond to second amended complaint."). In an abundance of caution, Plaintiffs condition their consent to the relief sought herein on an order expressly granting the extension identified in the December 12, 2018 motion.

11. The above constitutes good cause for this request.

WHEREFORE, Defendants, with consent from counsel for Plaintiffs, hereby move this Court for the entry of an Order as follows: 1) grant Defendants' leave *nunc pro tunc* to file a 45 page Motion to Dismiss the Second Amended Complaint and accept the document already filed (ECF No. 119); (2) grant Plaintiffs until February 13, 2019 to file an opposition to Defendants' Motion to Dismiss that is up to 45 pages in length; and (3) granting any other relief this Court deems just and proper.

Respectfully Submitted,

**Defendants Liberty Power Corp., LLC and
Liberty Power Holdings, LLC**

By Their Attorneys:

/s/ Jeffrey Brundage

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*Counsel for Defendants Liberty Power Corp.,
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Dated: January 10, 2019

LOCAL RULE 7.1(a)(2) CERTIFICATE OF COMPLIANCE

I, Jeffrey Brundage, counsel for Defendants, hereby certify that on January 10, 2019, I conferred via electronic mail with counsel for the Plaintiffs who assented to the relief sought herein.

/s/ Jeffrey Brundage
Jeffrey Brundage

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2019, the foregoing document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF):

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